



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 26 2012

Kirk L. Jowers, Esq.
Matthew T. Sanderson, Esq.
Caplin & Drysdale, Chtd.
One Thomas Circle, NW, Suite 1100
Washington, D.C. 20005

RE: MUR 6523
Wil Cardon for U.S. Senate

Dear Messrs. Jowers and Sanderson:

On January 26, 2012, the Federal Election Commission (the "Commission") notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 16, 2012, the Commission found, on the basis of the information in the complaint, information provided by the respondents, and other available information, that there is no reason to believe that Wil Cardon for U.S. Senate and Kevin Wolfe in his official capacity as treasurer violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Wilford R. Cardon **MUR: 6523**
Wil Cardon for U.S. Senate and Kevin Wolfe
in his official capacity as treasurer
Boa Sorte, LLC
Rio Claro, Inc.
The Cardon Family, LLC

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") by David E. Smith. See 2 U.S.C. § 437g(a)(1). The Complaint in this matter raises questions about certain loans that Wilford R. Cardon made to his authorized committee, Wil Cardon for U.S. Senate and Kevin Wolfe in his official capacity as treasurer (the "Committee"), in connection with Cardon's 2012 campaign for U.S. Senate. The Complaint alleges that Cardon's loans to the Committee totaling \$815,709.60 were improper because those funds were not his "personal funds" but belonged to several companies he controlled. The Complaint further contends that the timing of the loans suggests that some portion was funded from proceeds of a bank loan Cardon's companies had obtained without sufficient collateral. In either case, according to the Complaint, the loans constitute illegal corporate contributions in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

The Respondents deny the allegations and provide affidavit and documentary support demonstrating that the loans complied with the Act and Commission regulations. Accordingly, the Commission finds no reason to believe that Cardon, the Committee, Boa Sorte, LLC, Rio Claro, Inc., or The Cardon Family, LLC, violated 2 U.S.C. § 441b(a).

1 **II. FACTUAL BACKGROUND**

2 Wilford R. Cardon was a candidate for the 2012 Republican primary election for U.S.
3 Senate in Arizona. *See* Wilford R. Cardon, Statement of Candidacy (Aug. 12, 2011). He is
4 President and CEO of The Cardon Group, a family-owned real estate development company that
5 operates a number of related businesses. *See* THE CARDON GROUP, <http://cardon.com/> (last
6 visited June 25, 2012). These businesses include Rio Claro, Inc. ("Rio Claro"),¹ The Cardon
7 Family, LLC, and Boa Sorte, LLC ("Boa Sorte"). Cardon is Chairman, President, Secretary and
8 Director of Rio Claro, and Manager of The Cardon Family, LLC, and Boa Sorte. *See* STARPAS
9 Business Entity Search, ARIZ. CORP. COMM., <http://www.azcc.gov/> (last visited June 25, 2012).

10 The Complaint concerns certain candidate loans disclosed on reports the Committee filed
11 with the Commission. Since Cardon declared his candidacy on August 12, 2011, the Committee
12 has reported six loans from Cardon, totaling \$4,265,709.60:

DATE	REPORT	AMOUNT
5/26/2011	2011 October Quarterly ²	\$10,967.75
7/01/2011	2011 October Quarterly	\$34,741.85
8/29/2011	2011 October Quarterly	\$20,000.00
9/30/2011	2011 October Quarterly	\$750,000.00
12/31/2011	2011 Year End	\$450,000.00
3/30/2012	2012 April Quarterly	\$3,000,000.00
	TOTAL	\$4,265,709.60

13
14 The Complaint alleges that the first four loans, totaling \$815,709.60, were not made with
15 personal funds, but with the funds of three of his family-owned companies. Compl. at 1-3. The

¹ Rio Claro incorporated in Arizona on June 28, 2004. The Cardon Family, LLC and Boa Sorte were established as Arizona domestic limited liability companies on February 5, 2002, and December 28, 1995, respectively. *See* STARPAS Business Entity Search, ARIZ. CORP. COMM., <http://www.azcc.gov/> (last visited June 25, 2012).

² The Committee's 2011 October Quarterly Report notes that some transactions were not disclosed in earlier reports "because the candidate had not yet made the decision to form a committee. These expenses were paid by the Candidate and are now reflected as loans from the candidate's personal funds." 2011 Oct. Quarterly Rpt. at 5 (Oct. 14, 2011).

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1 Complaint observes that Cardon made the loans between May and August 2011, the same period
2 during which those three companies — Boa Sorte, Rio Claro, and The Cardon Family, LLC —
3 executed real estate transactions that resulted in the companies obtaining ownership interests in
4 Cardon's personal residence. *Id.* at 2. Based on the timing of these activities, the Complainant
5 infers that the funds used to make the candidate loans were in fact derived in part from funds of
6 those companies. *Id.*

7 The Complaint also contends that Cardon loaned his Committee funds that he obtained
8 from an inadequately secured bank loan, thus constituting an unlawful contribution by the
9 lending institution. Specifically, the Complaint asserts that Boa Sorte and Rio Claro obtained a
10 \$2.5 million line of credit from Comerica Bank on May 25, 2011, without adequate collateral as
11 set forth in 11 C.F.R. § 100.82. Compl. at 2-3. The Complaint alleges that the loan was secured
12 only with Cardon's residence, valued in 2011 at \$710,800, or "less than one third the amount of
13 the maximum loan disbursements." *Id.* at 2. The Complaint argues that Cardon therefore
14 violated 2 U.S.C. § 441b by making loans to his campaign using corporate funds derived from
15 the line of credit Comerica Bank issued to Boa Sorte and Rio Claro. *Id.*³

16 The Complaint provides a timeline of transactions involving Cardon's personal residence,
17 copies of the deed reflecting the line of credit, a property assessment, and a Financial Disclosure
18 Statement that Cardon filed with the Senate on December 14, 2011. Compl., Attach. A-C. The
19 timeline indicates that Cardon's residence was transferred to Boa Sorte, Rio Claro, and the
20 Cardon Family, LLC, on November 5, 2010, and reflects additional transactions relating to the

³ The Complaint also asserts that, if additional collateral was used to secure the loan, the Committee failed to report it to the Commission, and thus violated the Act. *Id.* at 2. As noted below, there is no FEC obligation to report the security on the line of credit because it was not used to fund Cardon's loans to the Committee.

1 same property in July and August 2011.⁴ Compl., Attach. A. The Financial Disclosure
2 Statement also discloses substantial income and assets under Cardon's control, including salary
3 exceeding \$177,000 and "Unearned Income" exceeding \$3 million from distributions from
4 personal trust accounts, among numerous other personal assets. Compl., Attach. C.

5 The Committee submitted a response to the Complaint. Boa Sorte, Rio Claro, and The
6 Cardon Family, LLC, did not submit responses, but the Committee's response attaches an
7 affidavit from the controller of Boa Sorte and Rio Claro.⁵ The Committee response states that
8 Cardon "indeed loaned personal funds to his campaign" and asserts that the Comerica Bank line
9 of credit was a separate, unrelated business transaction, which "Boa Sorte and Rio Claro sought
10 . . . strictly for business purposes." Comm. Resp. at 1-2.

11 The Committee provided a sworn affidavit from Cardon, in which he states that he
12 “contributed or loaned to [his] authorized campaign committee ‘personal funds,’ as that term is
13 used in 11 C.F.R. § 100.33,” that the companies he controls “did not disburse to [him] any
14 proceeds” from the Comerica Bank line of credit, and that those companies have not “paid any
15 funds to [him] in 2011 or 2012.” Wilford R. Cardon Aff. ¶¶ 3-5 (Mar. 14, 2012).

16 Cardon's affidavit, however, did not identify the source of the funds that he loaned the
17 Committee, and his characterization of "personal funds" was made in the form of a legal
18 conclusion. Thus, the Commission's Office of General Counsel invited further response from

⁴ Public property records indicate that Cardon's personal residence was first sold to Boa Sorte and Rio Claro on April 13, 2010, not in November 2010, the date identified in the timeline attached to the Complaint.

⁵ Before reaching the legal questions, the Committee's response states that the Complainant is involved in a business dispute with Cardon Homes Corp. Comm. Resp. at 1 (Mar. 16, 2012); see *Cardon Accused of FEC Violation*, USA TODAY (Jan. 21, 2012), available at http://www.usatoday.com/USCP/PNI/NEWS/2012-01-21-PNI0121met-Cardon-complaintPNIbRd_ST_U.htm (reporting that Complainant disclosed "a longstanding business grievance with the Cardon family" involving \$74,000 on a plumbing contract, and stated "I just figured if he's got that much to put in his campaign, maybe the Cardon family could pay some of the bills that they owe their subcontractors").

1 the Committee. See Letter from Daniel A. Petalas, Assoc. Gen. Counsel, FEC, to Kirk L. Jowers
2 and Matthew T. Sanderson, Counsel to Committee (May 4, 2012). In response, the Committee
3 explained that the funds it borrowed from Cardon “were disbursed from Mr. Cardon’s personal
4 bank account at Johnson Bank, which holds Mr. Cardon’s earned compensation, investment
5 proceeds, and income from trusts established before the 2012 election cycle.” Letter from Kirk
6 L. Jowers and Matthew T. Sanderson, Counsel for Committee, to Daniel A. Petalas, Assoc. Gen.
7 Counsel, FEC (May 14, 2012) (“Comm. Supp.”). It also stated that none of the three companies
8 at issue “disbursed any monies to Mr. Cardon for any purpose during 2011 or 2012.” *Id.* That
9 response is consistent with the sworn affidavit of Carla Frick, the controller of Boa Sorte and Rio
10 Claro, which states that “Boa Sorte and Rio Claro have not paid any funds to Wilford R. Cardon
11 in 2011 or 2012.” Carla Frick Aff. ¶ 13 (Mar. 14, 2012).

12 Concerning the bank loan, the Committee explains that Boa Sorte and Rio Claro began
13 loan discussions with a number of banks in 2009, before Senator Jon Kyl announced his plans
14 not to seek reelection to the Senate seat that Cardon sought.⁶ Comm. Resp. at 2. According to
15 Frick, the negotiations for a line a credit with Comerica Bank took place between October 2009
16 and May 2011. Frick Aff. ¶ 7. Frick attests that, as of March 2012, Boa Sorte and Rio Claro had
17 drawn on the line of credit only three times: a draw of \$377,377 in July 2011, and two draws
18 totaling \$1.5 million in December 2011 that were paid back in full on January 12, 2012. *Id.*
19 ¶¶ 10-11. Consistent with Frick’s affidavit, the Committee stated that Boa Sorte and Rio Claro
20 have used the Comerica Bank line of credit for business purposes only, to fund a third-party real

⁶ See *Jon Kyl Will Not Seek Reelection in 2012*, SENATOR JON KYL’S WEBSITE, (Feb. 10, 2011),
<http://www.kyl.senate.gov/record.cfm?id=331050>.

1 estate partner in July 2011 and to fund short-term business expenses in December 2011. Comm.
2 Resp. at 2.

3 Finally, the Committee denies the allegation that the Comerica Bank line of credit was
4 insufficiently collateralized, noting that the line of credit was secured by four separate properties,
5 not just one as the Complainant claims. Comm. Resp. at 2-3. Available information supports
6 that contention. The Commission received information, including copies of the appraisals and
7 deeds of trust, that the credit arrangement was secured by four properties Cardon's business
8 entities owned. Appraisals performed on each property in May and August 2010 assessed their
9 total value at \$3,685,000. On March 29, 2011, Comerica Bank approved a revolving line of
10 credit for \$2,550,000 secured by those properties, with a loan-to-value ratio of 70 percent.
11 Although the Commission does not have a copy of the promissory note relating to the line of
12 credit, the available documentation reflects a 4.25 percent interest rate and four withdrawals:
13 \$12,750 on May 25, 2011, repaid July 11, 2011; \$377,337 on July 12, 2011; \$1,000,000, on
14 December 28, 2011; and \$500,000 on December 29, 2011, and that the December 2011 advances
15 were repaid on January 12, 2012, with a current balance of \$377,337, as of March 2012.

16 **III. LEGAL ANALYSIS**

17 The Act permits candidates to make unlimited expenditures from personal funds in
18 connection with their campaigns. 11 C.F.R. § 110.10; *see also Buckley v. Valeo*, 424 U.S. 1, 54
19 (1976) (holding restrictions on candidates' expenditures from personal funds unconstitutional).
20 "Personal funds" include assets that, at the time the individual became a candidate, "the
21 candidate had legal right of access to or control over, and with respect to which the candidate had
22 (1) Legal and rightful title; or (2) An equitable interest." 11 C.F.R. § 100.33(a). "Personal

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1 funds" specifically include "Income from trusts established before the beginning of the election
2 cycle." *Id.* § 100.33(b).

3 The Act prohibits national banks and corporations from making contributions in
4 connection with any federal election and prohibits candidates from knowingly accepting or
5 receiving such contributions. 2 U.S.C. § 441b(a). In determining whether a payment constitutes
6 a corporate contribution in the context of candidate loans or expenditures, the Commission
7 considers whether the funds the candidate used were "personal funds" under 11 C.F.R.
8 § 100.33(a) as well as the process by which a corporation distributed the funds to a shareholder
9 candidate that ultimately were used to benefit the candidate's political committee.⁷

10 Here, there is no basis to conclude that the loans referenced in the Complaint were made
11 using funds from an improper source. Without question, Rio Claro, a corporation, was
12 prohibited from making a contribution in connection with an election, and Cardon and his
13 Committee were prohibited from accepting any such contribution. *See* 2 U.S.C. § 441b. Cardon
14 denies, however, that either Rio Claro, Boa Sorte, or The Cardon Family, LLC, made any
15 payments to him in 2011 or 2012. Cardon Aff. ¶¶ 3-5. And the controller for Boa Sorte and Rio
16 Claro provided a sworn statement supporting Cardon's contention that neither company paid
17 Cardon in 2011 or 2012. *Id.* ¶¶ 6-7. Further, according to the Committee, the funds it received

⁷ *See, e.g.,* MUR 6102 (Oliver for Congress) (Commission dismissed matter based on candidate's sworn statement that the distribution was proper); MUR 5655 (Rick Renzi) (Commission took no further action after investigation revealed the distributions had been properly made: they were loan repayments and thus personal funds); MURs 5283/5285 (Forrester) (Commission found no reason to believe that the candidate had made loans to his committee with corporate funds based on detailed information from the candidate regarding how he paid personal income tax on his subchapter S corporation's earnings and how the board of directors authorized certain distributions to him and other shareholders); MUR 3191 (Friends of Bill Zeff) (Commission found reason to believe that the candidate used corporate funds to make loans to his committee where the candidate's draw on equity of a subchapter S corporation in which he was a shareholder had the effect of a loan); MUR 3119 (Chandler for Congress) (Commission found reason to believe that money used to make loans to candidate's campaign was corporate when the candidate conceded that she borrowed money from her subchapter S corporation and would have to repay it).

1 from Cardon came from his personal bank account, "which holds Mr. Cardon's earned
2 compensation, investment proceeds, and income from trusts established before the 2012 election
3 cycle." Comm. Supp. at 1. And Cardon's Financial Disclosure Statement reflects that he
4 possessed sufficient income and assets to make those loans using exclusively personal funds. *Id.*
5 at 4-5.

6 Finally, the Complaint alleges that the bank line of credit was the source of the loan funds
7 and that there was inadequate security for that line of credit. The first allegation is premised on
8 the claim that the loans to the Committee were not made with personal funds, a proposition the
9 available information refutes.⁸ Because the loans to the Committee appear to have been made
10 with personal funds — and not derived from the line of credit — the allegation regarding
11 whether there was adequate security for the line of credit is not at issue.⁹

12 Accordingly, for the foregoing reasons, the Commission finds no reason to believe that
13 Cardon, the Committee, Boa Sorte, Rio Claro, or The Cardon Family, LLC violated 2 U.S.C.
14 § 441b(a).

⁸ The Complaint questions whether the Committee properly reported the collateral used to secure the line of credit. Because the loans to the Committee appear to have been made from Cardon's personal funds and not from the line of credit, the Committee was not required to disclose that collateral to the Commission and accordingly, the failure to disclose is not a violation of 2 U.S.C. § 434(b).

⁹ The Committee's Response and the Bank provide information about the sufficiency of collateral. *See* Comm. Resp. at 2-3.

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